



Virginia
Regulatory
Town Hall

Emergency Regulation Agency Background Document

Agency Name:	Board of Medicine, Department of Health Professions
VAC Chapter Number:	18 VAC 85-20-10 et seq.
Regulation Title:	Regulations Governing the Practice of Medicine, Osteopathy, Podiatry and Chiropractic
Action Title:	Changes in Practitioner Profile
Date:	

Section 9-6.14:4.1(C)(5) of the Administrative Process Act allows for the adoption of emergency regulations. Please refer to the APA, Executive Order Twenty-Four (98), and the *Virginia Register Form, Style and Procedure Manual* for more information and other materials required to be submitted in the emergency regulation submission package.

Emergency Preamble

Please provide a statement that the emergency regulation is necessary and provide detail of the nature of the emergency. Section 9-6.14:4.1(C)(5) of the Administrative Process Act states that an “emergency situation” means: (i) a situation involving an imminent threat to public health or safety; or (ii) a situation in which Virginia statutory law, the Virginia appropriation act, or federal law requires that a regulation shall be effective in 280 days or less from its enactment, or in which federal regulation requires a regulation to take effect no later than 280 days from its effective date. The statement should also identify that the regulation is not otherwise exempt under the provisions of § 9-6.14:4.1(C)(4).

Please include a brief summary of the emergency action. There is no need to state each provision or amendment.

Amendments to regulation are required in order to comply with an enactment clause in Chapter 38 of the 2002 Acts of the Assembly requiring the Board to promulgate regulations within 280 days of enactment for changes in the practitioner profile system for doctors of medicine, osteopathy and podiatry.

Basis

Please identify the state and/or federal source of legal authority to promulgate the emergency regulation. The discussion of this emergency statutory authority should: 1) describe its scope; and 2) include a brief statement relating the content of the statutory authority to the specific regulation. Full citations of legal authority and web site addresses, if available for locating the text of the cited authority, should be provided.

Please provide a statement that the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the emergency regulation and that it comports with applicable state and/or federal law.

The first enactment clause provided an emergency clause so the act would be in force from the date of passage, which was March 6, 2002.

The legal authority to promulgate the emergency regulation is in second enactment clause of Chapter 38 of the 2002 Acts of the Assembly, which states: "That the Board of Medicine shall promulgate regulations to implement the provisions of this act to be effective within 280 days of its enactment and a provision for the display of final disciplinary orders of the Board together with notices thereof and any summary suspension of a license."

The Office of the Attorney General has certified that the "emergency situation" which exists is specified in § 2.2-4011 of the Code of Virginia as one in which the agency is required by statutory law to have a regulation in effect within 280 days from the enactment of the law.

Substance

Please detail any changes, other than strictly editorial changes, that would be implemented. Please outline new substantive provisions, all substantive changes to existing sections, or both where appropriate. Please provide a cross-walk which includes citations to the specific sections of an existing regulation being amended and explain the consequences of the proposed changes. The statement should set forth the specific reasons the agency has determined that the proposed regulatory action would be essential to protect the health, safety or welfare of Virginians. The statement should also delineate any potential issues that may need to be addressed as a permanent final regulation is developed.

Chapter 38 of the 2002 Acts of the Assembly resolves several problems with the existing law on physician profiling in § 54.1-2910.1 as approved in the 2001 Special Session. The Department identified several ways in which the physician profile system could be more efficient and effective and worked with the patron and other interested parties in amending provisions of the law that were problematic and offered no real benefit to the consumers of health care services by doctors. Required elements of the profile are intended to provide information sufficient for the public to locate doctors in their area who practice in a particular specialty and to further assure the public health, safety and welfare in their informed selection of doctors in the Commonwealth.

As provided in the law, the emergency regulations will amend the following sections:

18 VAC 85-20-280. Required information.

Subsection A

- ?? This section has a technical amendment to incorporate language currently in subsection C requiring submission of information within 30 days of a change in what is on the profile.
- ?? An amendment specifies the reporting the telephone numbers for primary and secondary practice settings in addition to addresses.
- ?? An amendment eliminates the requirement for reporting of all insurance plans accepted or managed care plans in which the doctor participates. That information is now optional, as provided in a new section (285) on voluntary information.
- ?? An amendment adds the requirement of reporting translating services at secondary practice settings as well as primary practice settings.
- ?? Complying with #11 in the listing of information the law requires on the profile, the regulations are amended to specify that a doctor must report any felony conviction, including the date of the conviction, the nature of the conviction, the jurisdiction in which the conviction occurred and the sentence that was imposed.
- ?? The law requires the Board to specify in regulation other information related to the competency of doctors. In accordance, an amendment is adopted to require information on final disciplinary orders from a regulatory board of another jurisdiction or a disciplinary action taken by a federal health institution or agency.

Subsection B

- ?? The current subsection B has been moved to a new section (285) on voluntary information.
- ?? The new subsection B requires the posting of adjudicated orders and notices or decision documents that are subject to public disclosure in § 54.1-2400.2 D of the Code. In addition, the profile is required to reflect that unadjudicated notices and orders that are subject to be vacated are available to the public upon request.

Subsection C

- ?? Language in the current subsection C has been incorporated into subsection A of this section.
- ?? An amendment will require doctors to provide email addresses or facsimile numbers for the sole purpose of expediting the dissemination of information about a public health emergency. Such information is not published on the profile or released to the public.

18 VAC 85-20-285. Voluntary information.

This section is added to distinguish from required information that information which the doctor may voluntarily provide on the profile to include names of insurance plans accepted or managed care plans in which he participates or any other information that suggests additional competency or recognition.

18 VAC 85-20-290. Reporting of malpractice paid claims.

Current language in section 290 was deleted and replaced with requirements for reporting that are more useful in presenting information on malpractice to the public. For example, current regulations require the physician to report the specialty in which he practices; amended regulations require the physician to report the specialty in which he was practicing at the time the claim was paid. Calculation of the level of significance for each paid claim is based in part on the number of doctors in that specialty who have had paid claims, so the amended requirement is more pertinent. In addition, the Board found the standard deviation methodology set forth in current regulations produced segued results, so a different statistical method has been used to rate the paid claims. If there have been fewer than 10 paid claims in any specialty, no rating system is applied. For all other paid claims, the top 16% of claims are displayed as above average; the next 68% are displayed as average; and the bottom 16% of claims are displayed as below average.

18 VAC 85-20-300. Non-compliance or falsification of profile.

Technical changes are made in this section to ensure consistency in the application of requirements and disciplinary action for non-compliance.

There are no potential issues to be addressed in the development of regulations to replace the emergency provisions adopted by the Board. Issues related to the posting of disciplinary information were worked out with representatives of the Medical Society of Virginia prior to the introduction of SB 59. Several of the suggested statutory and regulatory changes resulted from an internal assessment of the profiling system as well as meetings with MSV and other external groups such as the Virginia Association of Health Plans, Trigon, the Bureau of Insurance and the Virginia Hospital and Healthcare Association.

Alternatives

Please describe the specific alternatives that were considered and the rationale used by the agency to select the least burdensome or intrusive method to meet the essential purpose of the action.

There were no alternatives to adoption of a regulation as it was mandated by Chapter 38 of the 2002 Acts of the Assembly.

There are several advantages of the amended regulation:

?? Current law requires the licensees to report any “insurance plans accepted.” This requirement is all-inclusive. It encompasses all plans that a licensee participates in (a higher rate of coverage for the patient) as well as any he accepts (higher out of pocket expense to the patient). The Board conducted an informal survey of insurance plans accepted by several local licensees in June 2000; one local group had over 1,155 insurance plans it accepted. It is not reasonable to expect licensees to keep this information accurate and up-to-date. Often, licensees have been added or dropped from a panel and are not aware of it until a patient presents or a billing issue occurs. In addition,

just naming the major insurance plan is misleading as there can be thousands of product lines associated with a plan. Just because a licensee accepts one, does not mean he accepts all. This could cause confusion for patients. The amended law and regulation make the reporting of this information optional and therefore put the onus on the licensee – if he chooses to report it, he is responsible for keeping it accurate.

- ?? Current regulations require the Board to make available on the profile “information regarding disciplinary notices and orders”. The amended regulations specify that only adjudicated notices and final orders and decision documents are to be available on the profile. Unadjudicated notices are also available by request from the Board but are not displayed on the profile.
- ?? Under current regulations, primary and secondary practice addresses are required but telephone numbers are not. Including telephone numbers would be a convenience for patients.
- ?? In addition, email addresses and facsimile numbers will be collected to provide an immediate contact for the Board or the Department of Health in cases of emergency; that information is required on the profile but not displayed or available to the public.
- ?? Current regulation requires the reporting of translating services only at the primary practice setting. Including secondary practice settings would better serve consumers.

Pursuant to Chapter 199 of the 2001 Acts of the Assembly, a requirement for reporting of felony convictions was added to the profiling system. On April 8, 2002, the Board published a Notice of Intended Regulatory Action to add that information to the profile. With the passage of Senate Bill 59 (Chapter 38 of the 2002 Acts), the Board is mandated to promulgate regulations implementing provisions of the law within 280 days. Therefore, the reporting of information related to a felony conviction is included in this emergency action.

Family Impact Statement

Please provide a preliminary analysis of the potential impact of the emergency action on the institution of the family and family stability including to what extent the action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

The Board has determined that there is no potential impact on the family or on family stability as a result of this regulation. There is also no anticipated increase or decrease in disposable family income.